

1 some self-serving reason decided not to interview. I'm not
2 sure if they interviewed or deposed in the preparation of
3 that report any of the board members of the company. In
4 fact, I think some of the board members may have represented
5 in interviews with the Bureau that they were not interviewed
6 by Mobilemedia's counsel.

7 MR. PETTIT: I was going to say, in fact I think
8 Mr. Schonman is aware that the directors were not
9 interviewed for this report for the reasons that we had no
10 reason to suspect knowledge.

11 MR. GORDIN: Still don't.

12 MR. PETTIT: But this --

13 MR. SCHONMAN: Your Honor, the report was a
14 self-serving report delivered to the Bureau. They
15 interviewed people who they wanted to interview. They
16 selected the people they wanted to interview. We're trying
17 to find out the universe of people who had information and
18 knowledge. There may be people not on that list who have
19 information and knowledge about this case which would help
20 the Commission in resolving these very important issues.

21 MR. GORDIN: Your Honor, the report was the
22 starting point. This is becoming now a red herring. The
23 report was a detailed report. It was the starting point.
24 Mr. Schonman has, and I'm not going to respond in kind,
25 somehow implied that the lawyers may have wanted -- the

1 attorneys on this, which I find the statement outrageous,
2 that the attorneys on this may have somehow intended to
3 somehow subvert this process.

4 Putting that statement side, which is just the
5 place it deserve to be, I'm sure that Mr. Schonman had no
6 such intention when he took the depositions that he took
7 when he used any question he felt like or the staff felt
8 like. He had carte blanche to explore. He's been doing
9 that for eight months. We don't have any more information.
10 We're not -- we shouldn't be deputized by him.

11 Your Honor, in your order correctly recognized
12 that the Commission also recognized, thought it was
13 important to move this along fairly speedily. Everything is
14 truncated. We've only got a few weeks to prepare all of
15 these documents for trial. I view this more as preparation
16 than anything else.

17 We didn't ask for this hearing. They could have
18 gone on and gone on and asked for more documents. We gave
19 them everything they asked for. We provided all the people
20 that they've asked for. We didn't fight about not attending
21 certain depositions. This procedure is basically, there's
22 no basis for it and it's prejudicial.

23 JUDGE CHACHKIN: Mr. Schonman, anything further?

24 MR. SCHONMAN: Just one item. That is the Bureau
25 has certainly conceded that we've received a considerable

1 amount of information prior to designation. I don't believe
2 that the fact that the company has given the Bureau a
3 considerable amount of information prior to the commencement
4 of this hearing should relieve Mobilemedia from complying
5 with a valid discovery request. The case was commenced by
6 the designation of that, by the release of the hearing
7 designation order on April 8th, were involved in discovery.
8 And what I hear Mobilemedia saying now is, well, we were
9 very helpful for the Bureau before designation. That means
10 we don't have to provide anymore information to them.

11 MR. GORDIN: Your Honor, if I may just say one
12 more thing. Your Honor's order --

13 MR. SCHONMAN: That doesn't seem to me like a
14 valid response to a discovery request. We've narrowly
15 tailored the questions. We're not asking them to go on a
16 fishing expedition. We served these interrogatories for the
17 precise purpose of expediting the proceeding. I don't think
18 it's appropriate for Mobilemedia now to sit back and say
19 even though it's during discovery, Your Honor, we shouldn't
20 have to provide anything because we gave them everything
21 prior to the commencement of the hearing.

22 MR. GORDIN: Your Honor, may I just have one more
23 word?

24 JUDGE CHACHKIN: Yes.

25 MR. GORDIN: On a slightly different point. Your

1 Honor issued this order on April 16th. The order said no
2 interrogatories. Your Honor said by April 30th essentially
3 whatever will be needed in terms of written document
4 requests should be in. There has not been compliance with
5 the order at all on days. If they didn't agree with the
6 order, they shouldn't have waited three weeks to object.

7 I think they've waived any objection. It's now
8 sitting here before Your Honor now on May 6th is not the
9 time to suddenly say, well, the fact we didn't agree with
10 the order doesn't matter. We didn't have to file anything.
11 The fact that we didn't comply with the order doesn't matter
12 because we can sit here and ask for whatever we want.

13 I think the rules are what make the proceeding
14 fair and the rules weren't followed and I believe there's
15 been a waiver. And on that point alone, Your Honor should
16 deny this request.

17 JUDGE CHACHKIN: Mr. Schonman, we have to complete
18 this hearing in short order. Now, I don't know what you
19 mean by discovery. Is it now your intention to depose
20 numerous people who you haven't deposed previously or just
21 what? And how do you intend to complete this by May 27th?

22 MR. SCHONMAN: Your Honor, if we don't depose
23 people, then perhaps the Bureau will at least interview
24 potential witnesses.

25 JUDGE CHACHKIN: Now, the Bureau presumably has

1 information from all these various reports and depositions
2 that's been taken, both by the Bureau apparently and also by
3 Mobilemedia.

4 MR. SCHONMAN: Yes, Your Honor.

5 JUDGE CHACHKIN: Now, on the basis of that, aren't
6 they in the position now to go interview further people and
7 if they want to interview other people who they feel have
8 relevant information? I mean, what -- as I understand from
9 Mobilemedia, they have provided you with all the knowledge
10 or information they have. Now, what are you, and they're
11 not in a position, what you're asking them basically is to
12 go out and conduct an investigation as to who had knowledge
13 or information relating to the filing or decision to file
14 the forms 489 between October 1st, 1993 and the present. As
15 I understand, they have provided you with all the
16 information they have concerning this matter.

17 MR. SCHONMAN: Your Honor, if they've already
18 provided a full response to interrogatory number three --

19 JUDGE CHACHKIN: I didn't say that. They provided
20 information -- they've provided you with all the material
21 they have concerning the issues the Commission has
22 designated. Now, it's up to you if you feel there are other
23 individuals involved to conduct further investigation,
24 whatever you want to conduct.

25 But are you saying it's their responsibility now

1 to go interview all the persons who worked at the
2 corporation between these dates and find out who might have
3 had information relating to the filing or who had knowledge
4 or information relating to the filing of the decision to
5 file those 489s?

6 I mean, I don't quite understand what you mean by
7 this issue. It sounds like you're putting the onus on them
8 to go out and conduct an investigation for you.

9 MR. SCHONMAN: Your Honor, this is discovery.
10 This is an interrogatory. This --

11 JUDGE CHACHKIN: Interrogatory which they provide
12 you with the knowledge that they have. And as I understand,
13 they have provided with all the knowledge and information
14 they have. You want them to do your work for you. Your
15 work --

16 MR. SCHONMAN: Your Honor --

17 JUDGE CHACHKIN: Go ahead.

18 MR. SCHONMAN: Your Honor, perhaps we can reach an
19 agreement on this interrogatory. Perhaps number, let's look
20 at number three, for example. Identify all people who have
21 knowledge or information regarding the misconduct.

22 To the extent that they've provided us with names
23 of those people, if you could direct Mobilemedia to identify
24 in which document they've provided us the names of those
25 people, that would be helpful to us. But we would also be

1 interested in obtaining the names of any other people who
2 have knowledge and information about the misconduct that
3 they have not already provided us with.

4 JUDGE CHACHKIN: But there's an assumption that
5 they have some information which they've withheld from you.
6 As I understand, they have provided you with all the
7 information they have.

8 MR. SCHONMAN: They've provided us with all the
9 information --

10 JUDGE CHACHKIN: What I mean is they've conducted
11 interviews. They prepared a report. They've taken
12 depositions. And whatever they've done they've given you.
13 They haven't withheld anything.

14 Now, I gather from this interrogatory three you
15 wanted to go out and determine whether there were other
16 persons who were involved.

17 MR. SCHONMAN: We would like to know the universe
18 of people who have information about these false filings.
19 That would seem basic to the Commission's resolution of the
20 issue, to find out who knew what.

21 JUDGE CHACHKIN: The difficulty is they don't have
22 that information. You're asking them to conduct an
23 investigation for you.

24 MR. SCHONMAN: We're asking them to respond to a
25 normal discovery tool.

1 JUDGE CHACHKIN: If they have the information, but
2 they say they don't have that information.

3 MR. SCHONMAN: Your Honor, it seems entirely
4 appropriate during discovery to ask someone in an
5 interrogatory for particular information and to have them
6 compile a list. We're not asking for documents. We're
7 asking for them to respond to an interrogatory.

8 JUDGE CHACHKIN: Any further comments on this?

9 MR. PETTIT: I don't think so, Your Honor. I'll
10 just not that I think the operative word is universe. It is
11 a large number of people. I think we would have to look at.

12 MR. SCHONMAN: Well, to the extent that we can
13 identify people who have knowledge about the misconduct and
14 the Bureau is very much hampered in its ability to prosecute
15 the case, we know about a large number of people so far.

16 JUDGE CHACHKIN: Yes.

17 MR. SCHONMAN: But we'd like to know the universe
18 of people. There may be people out there who counsel has
19 not revealed to us who have information about the
20 misconduct.

21 MR. GORDIN: Your Honor, we have no knowledge of
22 persons with knowledge of misconduct whose name has not been
23 revealed, So that's our --

24 MR. PETTIT: Your Honor, certainly as I sit
25 here -- I suppose we could go back and look at interview

1 notes and maybe there's some name lurking there. I have no
2 idea. I mean, we have not started to do this. What I'm
3 telling you is that these are the people that were
4 interviewed. This is what our information was based on.
5 And I certainly am not aware sitting here today of anybody
6 else who is at all implicated that the Bureau is not already
7 aware of.

8 MR. GORDIN: Which isn't to say that we didn't go
9 out and view the person who cleans up at night to see if
10 they saw something on someone's desk that's not pertinent,
11 that's not the thing to do, that's not reasonable.

12 MR. SCHONMAN: Well, Your Honor, we're not asking
13 for something like that.

14 MR. GORDIN: Even in -- this interrogatory on its
15 face, I suggest, wouldn't stand even in normal discovery
16 it's so broad based.

17 JUDGE CHACHKIN: I would agree.

18 MR. SCHONMAN: Your Honor, we're not asking for
19 the names of cleaning people. But, for example, perhaps the
20 regulatory counsel had a paralegal who was working for him
21 and that individual might know about some --

22 MR. PETTIT: Actually, well, I think that person
23 is on the list, but I couldn't tell you for sure.

24 MR. SCHONMAN: Well, we'd like to know for sure.
25 That's exactly what we're trying to find out.

1 MR. PETTIT: It's fascinating to me that this was
2 not done in October. I mean, you have this list of people.

3 MR. SCHONMAN: Well, fascinating or not --

4 JUDGE CHACHKIN: I'm not going to grant this
5 request. It's much too broad based. Now, it's one thing if
6 you conduct, if you review their report and you review
7 depositions and you find on the basis of that there's some
8 information you feel on the basis of that that you want as
9 material.

10 But at this stage to ask for a broad based
11 information request like this when you already have stacks
12 and stacks of documents which you could use as a point of
13 reference is difficult for me to understand.

14 This is not a case when you're first starting out
15 an investigation where trying to find out what went on. You
16 have sources. Now, it's up to you to use those sources to
17 develop further information. That's one thing.

18 But not a broad based question like this requiring
19 them to conduct their own investigation for the first time
20 to find out who in the world might have known anything about
21 the decision to file these 489s.

22 You have material. Use it. Go through the
23 material you have. On the basis of that, depose people if
24 you feel that they might have pertinent information.

25 I can understand that you want to know the names,

1 last known business or residence addresses of individuals
2 who you feel may have material information. That's a
3 reasonable request and there's no reason why they can't
4 provide that, with or without an interrogatory. I have no
5 problem with that.

6 As far as you want identification of senior
7 management including senior executive staff, again, you have
8 all kind of source material. You're in a position now to
9 say who is senior management in your judgment and who is
10 not. And ask for some identification if you feel there are
11 some other individuals.

12 This is a case where we expect to go to trial and
13 you're supposed to have your exhibits exchanged by May 27th.
14 It's a little early -- a little late now to start a
15 preliminary investigation. You have all kinds of material.
16 Use it.

17 So only with respect to the issue of interrogatory
18 one will I require that information to be provided.

19 With respect to issue two, the item two if you
20 could further identify which positions you feel constitute
21 senior management or senior executive staff, that
22 information could also be furnished, namely the last known
23 business and residence addresses and telephone numbers of
24 these individuals.

25 All right. Let's proceed. Do you intend to

1 conduct further depositions?

2 MR. SCHONMAN: We're considering that, Your Honor.
3 We've contacted some people and we're trying to ascertain
4 the prospective deponents' schedules.

5 MR. GORDIN: I hope you'll coordinate with us so
6 we can work out a mutually agreeable schedule.

7 MR. SCHONMAN: We have every intention of doing
8 that, Your Honor.

9 JUDGE CHACHKIN: All right. As far as
10 stipulations are concerned, it seems to me this case is
11 certainly a proper case for stipulation.

12 MR. SCHONMAN: Your Honor, as I stated earlier, we
13 intend to serve a request for admissions on Mobilemedia.
14 We're attempting to do that expeditiously.

15 JUDGE CHACHKIN: What about a stipulation of
16 facts? Have you gotten together with Mobilemedia to discuss
17 stipulations?

18 MR. PETTIT: We have discussed it briefly, Your
19 Honor.

20 MR. GORDIN: Your Honor, at the hearing, at the
21 meeting rather, I raised the issue of just getting together
22 and stipulating because I believe most of these facts are
23 not in dispute. If any really are. But I assume the Bureau
24 will disagree that none of them are.

25 The Bureau indicated it wanted to serve us with

1 requests to admit. I'm not entirely clear why the
2 preference because I don't think there's any issue and the
3 company has no issue that there was a violation of the rules
4 regarding the filing of these 489s and a related violation
5 of the forty-mile rule.

6 I don't think that's a factual issue and we do not
7 take -- we would like to get this hearing on promptly and
8 get it through promptly because of our situation. And a lot
9 of these issues there's simply no dispute on. We're more
10 than willing to try work this out.

11 In fact, we would stipulate to all of the facts in
12 the report that the Bureau needs to establish or to the
13 subsequent things about what we filed, the number 489
14 filings that were false. There's no question that the
15 people in the company and therefore the company's
16 responsible committed grievous errors. And we're not
17 fighting about that. We were here telling the Commission
18 that we made a mistake, that we made a serious mistake.

19 MR. SCHONMAN: Your Honor --

20 MR. GORDIN: So there's no need to take up a lot
21 of Court time with witnesses to say what everyone knows.

22 MR. SCHONMAN: Your Honor, I think this is
23 something that the Bureau and counsel from Mobilemedia can
24 discuss further involving stipulations and commission of
25 fact. And we will endeavor to work on that.

1 JUDGE CHACHKIN: All right. Well, I'm available
2 if the parties need rulings on anything on which there's
3 disagreement. Because my mandate is to get a recommended
4 decision out in six months and I intend to do that.

5 MR. GORDIN: Your Honor?

6 JUDGE CHACHKIN: Yes.

7 MR. GORDIN: I apologize, I see Your Honor's
8 looking at the next stage which is the pre -- the May 27
9 stage. There is an open issue in that we have requested
10 certain categories of documents from the Bureau and we did
11 this pursuant to Your Honor's order. We sent a letter on
12 April 30th. We did not copy Your Honor on the letter. I
13 have copies of it here and it had I believe eight categories
14 of documents.

15 As I understand the Bureau's position, they oppose
16 and say we need to go through FOIA. I believe there are
17 several reasons why that's an incorrect position. I wanted
18 to bring that to Your Honor's attention so Your Honor can
19 address that at a time when Your Honor would like to address
20 it.

21 JUDGE CHACHKIN: Well, do you have the --

22 MR. GORDIN: Yes, I do, Your Honor. May I
23 approach?

24 JUDGE CHACHKIN: Yes, sure. Thank you.

25 MR. GORDIN: Do you have a copy?

1 JUDGE CHACHKIN: Yes.

2 MR. GORDIN: And what is the basis of your
3 request? It seems to me this is evidence that the
4 Bureau -- in the possession of the Bureau. But what right
5 do you have to see this evidence? The Bureau has the burden
6 of proceeding, the burden of proof on these issues.

7 MR. GORDIN: Well, Your Honor, first, Your Honor's
8 April 16 order.

9 JUDGE CHACHKIN: Yes.

10 MR. GORDIN: Indicated that the parties I believe
11 with respect to the production of documents, that the
12 parties shall at or prior to the meeting described above
13 exchange a list of documents which they are seeking.

14 Now, under rule 1.311, the general rule says that
15 documents can be ordered to be exchanged for either
16 discovery or for production and preservation of evidence or
17 both. And I interpret this order to be in conjunction with
18 that because as Your Honor has correctly pointed out, we are
19 now gathering evidence for presentation and there's also a
20 fairness issue. The evidence that we're asking for is
21 evidence and not merely to be used.

22 For example, it seems that as a matter of fairness
23 to the extent a deposition was taken of a present or former
24 director or officer, the United States does not have a right
25 to hide that from us in a hearing.

1 Similarly, to the extent that they've gathered any
2 documents from other sources or we should have a right to
3 have those documents. Some of these requests, a few of
4 these requests which go to what the Bureau was informed, go
5 to the paragraph 14(b) issue that the Commission just held
6 should be in the case. There is an issue about whether
7 there was anything misleading. We contend now as I
8 mentioned earlier Your Honor, not only did we submit this
9 report on October 15, but the report was part of an ongoing
10 dialogue and presentation to the Commission. And if the
11 Commission has in its notes that we informed them of certain
12 facts which are not an issue, I think the issue of character
13 and the issue of the forthrightness of what we were, of what
14 was being presented to the Commission has been put in issue.
15 And if the Commission has that information, in fact has it
16 in their notes, it's certainly wrong to proceed as though
17 they didn't have it.

18 Other issues, other document requests here go to
19 specific issues which have been raised by the order which
20 has been interpreted in discussions by the Bureau.

21 For example, there's been much testimony, but no
22 evidence, and much production of documents as to whether
23 Mr. Bayer was then the acting CEO had knowledge of the
24 fraudulently filed FCC 489 forms prior to August 19, 1996.
25 I'm not aware of any such evidence. But to the extent they

1 are holding documents that are evidence, I think it behooves
2 everyone to get them in advance, both for stipulation
3 purposes and because this is not a trial by surprise. So I
4 believe that the requests here are fairly focused on matters
5 of evidence, not really discovery.

6 And therefore, I think your order is proper, both
7 under 1.311 as well as just under due process given the
8 truncated nature of these proceedings. Obviously, a FOIA
9 request. Even if this were a discovery request and not a
10 request pursuant to order, it would be inadequate to get any
11 information prior to the beginning of the hearing. And
12 therefore, it's really is not a remedy. I'll be glad to
13 address each individually.

14 JUDGE CHACHKIN: Well, we may get to that. I want
15 to hear the general views of the Bureau.

16 MR. SCHONMAN: Well, Your Honor, the general views
17 of the Bureau are that the rules require that requests for
18 documents shall not be entertained when they're served on
19 the Bureau. That in order to obtain documents from the
20 Bureau or from the Commission generally that they must use
21 their statutory rights under FOIA. And that's the course
22 that Mobilemedia should now be pursuing.

23 The second matter is that all the information that
24 they're seeking is information that the Bureau obtained
25 during the course of its investigation. There's no

1 obligation that the Bureau turned over any of that
2 information.

3 MR. GORDIN: Your Honor, the investigation -- I'm
4 sorry.

5 MR. SCHONMAN: I'm not finished. This is the
6 fishing expedition that counsel was referring to earlier
7 when they were talking about the Bureau's request for three
8 interrogatories. If you look at the very first statement on
9 this page it says, as used below the term document should be
10 interpreted in the broadest meaning permitted.

11 That's hardly consistent with their accusations
12 concerning the Bureau's interrogatories earlier. This is a
13 fishing expedition in the broadest sense of the word. The
14 Bureau doesn't have to comply with this. They have to use
15 FOIA. That's the appropriate means for seeking documents.

16 MR. GORDIN: Your Honor, may I respond?

17 JUDGE CHACHKIN: Yes.

18 MR. GORDIN: Your Honor issued an order on
19 April 16th. We relied on that order.

20 JUDGE CHACHKIN: But where is there anything in my
21 order which pertains to the material you're now seeking?

22 MR. GORDIN: Well, it says exchange on
23 paragraph B, Your Honor. It says, at or before this meeting,
24 at or before April 30th, the parties, not just the Bureau,
25 shall exchange, let's see. I'm sorry. The parties shall

1 exchange a list of documents which they are seeking. We
2 have provided that list of documents pursuant to an order.
3 There was no objection to the order.

4 These are materials that I don't believe FOIA has
5 required since this is really production of material for
6 evidence and the preservation of material for evidence. I
7 believe that any objection would have been waived.

8 It's mindless -- the law is non-forceful when it
9 doesn't -- the letter of the law can't be enforced when it
10 provides no meaningful remedy. FOIA, given the -- to say
11 that you can truncate this procedure down to such a small
12 window that the normal procedures available become
13 unavailable, you still must follow them, is not something I
14 think that any branch of the United States government would
15 be advocating.

16 In terms of the breadth of the word document, I'd
17 be happy to amend that. I think that what we meant there is
18 we didn't want to go through the standard litany of document
19 includes notes and memoranda or letters and it includes
20 anything on the computer as well as anything written. I
21 don't think anything broader.

22 I mean, the requests speak for themselves. If
23 there is a problem with breadth of any request, we are happy
24 that was unintended or that we're happy to discuss it
25 because we don't mean for this to be a fishing expedition.

1 Of course, we haven't had a chance to go fishing
2 in the first place. We've been providing all the
3 information up to now. But this is hardly fishing an
4 saying, look. If you've taken these depositions of our
5 people and we weren't there, we'd like to see them. If
6 you've gotten documents that are relevant to this that are
7 evidence, we'd like to see it.

8 If you've got a document there that evidences
9 someone's knowledge or lack of knowledge, you've got to
10 produce it. If it shows it's knowledge, it's going to be
11 evidence. We'd like to see it. We need it for, we'd like
12 to see what we're stipulating to. We shouldn't have to
13 stipulate in the blind. We'd like to know what we're going
14 in the trial against.

15 If you've got a document that shows that Mr. Bayer
16 or someone else didn't have knowledge, then there's an
17 ethical obligation to provide that. You shouldn't be hiding
18 that, particularly the United States government.

19 So I don't think these are over broad. And I
20 believe they're in compliance with your order. Your order
21 wasn't objected to. Any objection would have been waived.
22 And I think the order's in compliance with the rule.

23 JUDGE CHACHKIN: Well, that's the question,
24 whether it's in compliance with any rule. It seems to me
25 that the material you're looking at, you're seeking, is

1 evidentiary material that's been gathered in the course of
2 this investigation. Now, obviously, if they put on any of
3 these witnesses, you would have a right to see any writings
4 or anything of these witnesses, depositions or what have
5 you, that you would have a right to see that. But whether
6 you have a right at this time to see what the Bureau's case
7 consists of is another question. And I'm not sure under
8 Commission law you're entitled to see that material at this
9 stage.

10 Now, the Bureau may wish, of course, in order to
11 facilitate presentation of evidence and stipulations to
12 provide you with some information to show what the basis of
13 stipulations are, but that's their choice. But my view it
14 seems to me, I think even investigations are not subject to
15 FOIA.

16 MR. PETTIT: During the pendency of the
17 investigation, that's true.

18 JUDGE CHACHKIN: Pardon me?

19 MR. PETTIT: During the pendency of the
20 investigation, that's true, Your Honor.

21 JUDGE CHACHKIN: And that's what's giving
22 difficulty to me, whether or not you're entitled to this
23 material.

24 MR. PETTIT: I assume the investigation is over
25 and has resulted in fact --

1 JUDGE CHACHKIN: Well, but the normal course is
2 the Bureau puts in their case and when they put in their
3 case, then you see what evidence they have. They have the
4 burdens. They have to put in their case. They don't have
5 to reveal to you in advance what their case consists of.
6 They're not required to.

7 If they had the names of persons who have relevant
8 information, that's one thing. But the information that
9 they've gathered is not something that you're entitled to.
10 That's my understanding of the law. If you could show me
11 case precedence different, I'd certainly look at it.

12 But now, of course, at the time they exchange
13 exhibits, you'll see whatever document they have that
14 they're relying on. And at a time they present any
15 witnesses, you'll be entitled to any underlying statements
16 that the witness gave and you'd be entitled to see that
17 before they're cross examined. So you wouldn't be
18 surprised.

19 Now, the question is at what stage the Bureau
20 wants to provide you with this information to accelerate the
21 hearing. That's another question. But I think it's all in
22 the hands of the Bureau unless I see something to the
23 contrary.

24 MR. PETTIT: So, Judge, if I understand you,
25 you're saying it's sort of a matter of timing.

1 JUDGE CHACHKIN: I think so, yes.

2 MR. PETTIT: And whatever the Bureau intends to
3 rely on at the time.

4 JUDGE CHACHKIN: That's correct.

5 MR. PETTIT: Okay.

6 MR. GORDIN: Your Honor, Rule 1.311 -- may I have
7 one moment?

8 JUDGE CHACHKIN: Yes, show me what rule you have
9 in mind.

10 MR. GORDIN: Your Honor, Rule 1.311.

11 JUDGE CHACHKIN: Yes.

12 MR. GORDIN: States in part that provides for
13 orders to parties relating to the production of documents.
14 I'm skipping to some other things about real property.
15 These procedures may be used for the discovery of relevant
16 facts for the production and preservation of evidence for
17 use at a hearing or for both purposes.

18 JUDGE CHACHKIN: Are you looking at what it says,
19 what the Bureau has to provide?

20 MR. GORDIN: Well, in terms of a written request,
21 yes. Under .325, written requests to the Bureau need to go
22 through FOIA.

23 JUDGE CHACHKIN: That's not what I'm talking
24 about. The documents that the Bureau has to provide, the
25 Commission has to provide.

1 MR. GORDIN: Are you referring to .311 if I may
2 ask?

3 JUDGE CHACHKIN: I believe so.

4 MR. GORDIN: Or .325.

5 MR. SCHONMAN: Your Honor, I can provide you with
6 a copy of the rules if you need one at the moment.

7 JUDGE CHACHKIN: I can get my own copy

8 MR. GORDIN: .325, Your Honor, refers to requests
9 to the Commission for documents. I was proceeding under
10 order, under your April 16 order, not just under .325. Now,
11 a few points I think to be made. One is that -- and this
12 order was issued April 16th. We're again sitting here where
13 nothing was done in response to the order and the Bureau
14 apparently didn't feel bound by it, never made an objection
15 that the order was beyond the scope. And now three weeks
16 later is before Your Honor saying, well, this is, this order
17 really isn't authorized because we read .325 to cutoff the
18 Court's ability to issue any orders.

19 JUDGE CHACHKIN: Well, I think you're misreading
20 my general order. All I said was I provided what the
21 procedures should be. I certainly didn't rule on any
22 specific document request.

23 MR. GORDIN: Now, point three --

24 JUDGE CHACHKIN: I didn't have a specific document
25 request before me. I just said what the general procedure

1 should be. If you want documents, you should ask for it.
2 But certainly I didn't in any way foreclose the Bureau from
3 arguing that the documents that were requested should not be
4 produced.

5 MR. GORDIN: Well, I believe that the truncated
6 nature of the proceedings unless Your Honor wishes -- that
7 the truncated nature of these proceedings, which is not
8 dealt with in that rule, precludes the effective use of
9 FOIA. So that it's in fact no right at all or no remedy at
10 all to this situation.

11 Now, Your Honor, has referred to the fact that we
12 may get documents in due course at the time they're used
13 during the proceeding. Presumably as an advocate to the
14 extent a document disproved, to the extent there were two
15 documents and one tended to prove what the Bureau wanted to
16 establish and one tended to disprove it, the Bureau -- under
17 current procedures, we might not be able to get that
18 document because we don't have access to it in other ways.
19 The Bureau might not want to use the exculpatory document.

20 JUDGE CHACHKIN: Well, I assume the Bureau will
21 not withhold exculpatory documents from you. If they put a
22 witness on or they have documents, they will provide it to
23 you. The question is at what time do they have to provide
24 you documents, in discovery or in the course of the hearing
25 itself?